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C O N F I D E N T I A L LA PAZ 002827

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TAGS: ECON PGOV PREL BL

SUBJECT: CONSTITUENT ASSEMBLY SCENARIO II: NO DEAL = CRISIS

REF: A. LA PAZ 2824
1B. LA PAZ 2689

Classified By: EcoPol Chief Mike Hammer for reasons 1.4 (b) and (d).

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Summary
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11. (C) The Constituent Assembly is in recess until October 22 but is in danger of complete collapse if the Movement Toward Socialism (MAS) party and opposition cannot reach agreement on key issues. This cable lays out the second of two likely scenarios regarding the Constituent Assembly's future -- the possibility that the MAS goes to its "Plan B", as referenced by Evo's own inner circle, under which the MAS plans to use "conflict", including possible extra-constitutional means, to arrive at a new constitution. Plan B is considered more likely than scenario I -- a negotiated agreement (ref a).

12. (C) Plan B, or as some media pundits refer to it -- the "mano dura" (the hard hand), is predicated on President Morales and the MAS exploiting any and all possible legal gray areas to advance their constitutional project. The most likely ploy would be to call for a referendum to approve a new constitution outside of the established legal framework. Evo would argue that he won the presidency with a majority (53.7 percent) and that given that the "oligarchy" is blocking his "change" program, he is within his right to take the issues to the people. Recent government attacks on the courts mean that the normal legal checks may not be in place to prevent MAS' extra-constitutional machinations. In response opposition strong-holds are certain to call for massive civil strikes and the possibility of serious internal (bloody) conflict between pro- and anti-MAS groups is high. Opposition forces in Santa Cruz and Tarija may resort to shutting off gas supplies to the pro-MAS highland departments, and may refuse to send tax collections to La Paz. Morales would likely be forced to call on security forces to maintain order. Emboffs sources within the military (who are likely favorably biased toward us) state

the armed forces would not respond to an order to crack down on Santa Cruz or other opposition departments.

13. (C) The conventional wisdom about President Morales is that he is determined to arrive at a new constitution, either via negotiation or conflict (Plan B). While Plan B is considered more probable than a negotiated settlement, Morales is known to be a political pragmatist when necessary.

If there is truly not sufficient support in the military to back his potentially extra-constitutional efforts, Evo may dabble with Plan B but eventually return to negotiation. End Summary.

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Moving to Plan B
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14. (C) Should the negotiations fail the MAS is prepared to resort to Plan B. Vice President Alvaro Garcia Linera alluded to Plan B during his September 12 meeting with the Ambassador. During the September 12 meeting, the Vice President stated that one cannot cede anything to those who have been in power because "they will see it as a sign of weakness and demand more." Instead, Garcia Linera added, "we have to set the terms," and decide what we want to concede. The Vice President also reportedly referred to Plan B in a June meeting with GRULAC Ambassadors in La Paz. On October 17, MAS assembly delegate Raul Prada discussed the notion of Plan B publicly, and mentioned that if negotiations failed that the MAS would "change from scenario one, the democratic and peaceful development of the Constituent (Assembly), to another more conflictive (scenario). . ."

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What is Plan B?
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15. (C) Plan B, as we can best understand it, consists of the following components.

i. The MAS and opposition fail to reach agreement on a new constitution, and the two parties fail to extend the Constituent Assembly beyond its current December 14 deadline.

ii. The MAS, using its simple majority approves its version of the constitution after the Constituent Assembly reconvenes. The MAS could then declare assembly dead for lack of opposition cooperation and the lack of security for the assembly in Sucre. (Note: The assembly went into recess because pro-Sucre protesters were threatening the site of the assembly as well as some of the delegates. End Note). This simple majority vote would violate the assembly's enabling legislation, which requires that the new constitution obtain approval of two-thirds of the assembly's delegates.

iii. The MAS, via a strong public relations campaign, blames the opposition for the failure of the Constituent Assembly. President Morales argues that the MAS has popular legitimacy via its majority and that the party had to resort to a simple majority vote in the assembly, because the opposition was not negotiating in good faith and was purposefully trying to kill the Constituent Assembly.

iv. The MAS (illegally) calls for a national referendum on their constitution. This referendum would clearly violate the rules agreed upon by congress when the congress voted to extend the assembly's mandate from August 6 to December 14. Congress stipulated that any articles of the new constitution which failed to obtain a two-thirds majority in the Constituent Assembly should be sent to a national referendum, prior to a referendum on the entire constitution.

v. President Morales campaigns hard for the MAS constitution using the full power of his office, his considerable popularity, political patronage (i.e., money and infrastructure projects), the state-run media outlets, and advertising buys on private media. Financing likely will come from internal (state revenues) and external (Venezuelan)

sources. Morales administration (and Venezuelan) sponsored voter registration programs ensure that additional MAS supporters vote on referendum day.

vi. With Morales' strong support, a straight yes/no vote on the MAS constitution is likely to achieve the fifty percent required for approval.

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How Can Plan B Succeed?
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¶6. (C) As we understand it, Plan B is predicated on President Morales and the MAS exploiting any and all possible legal gray areas to advance their constitutional project. Under this scenario, the MAS would try to create a perception of legality and democracy, while actually violating the rules (the enabling legislation) of the Constituent Assembly as well as other laws. Evo would likely justify his actions stating that his party's majority in the assembly and the national referendum are democratic expressions of the (majority of the) people. Morales will likely argue that the convening of the Constituent Assembly represented the will of the people, and that the opposition using tricks and technicalities thwarted the people's will.

¶7. (C) In the meantime, the normal legal/constitutional checks on the MAS and Evo's power to force through the MAS constitution have already been negated. The Constitutional Tribunal (the body that would rule on the legality of Morales' moves) is currently suspended because of politically-motivated impeachment charges against four of the tribunal's five magistrates (ref B). (Note: The opposition controlled senate could absolve the magistrates, before they go into their December/January recess. However, there are additional impeachment charges pending in the house of deputies. End Note). Furthermore, when the congress goes into recess, Morales will have the ability to appoint interim magistrates to the Constitutional Tribunal. More importantly, due to vacancies on the National Election Court (CNE) Morales will have the power to appoint one new justice to the court, while congress has the responsibility to appoint two, one will likely be MAS the other opposition. This will tip the balance of the CNE to a MAS majority. With this majority representation, the CNE could help him bring legitimacy to the MAS' national referendum on the constitution. (Note: If the congress fails to act in appointing new CNE justices, Morales might appoint interim justices further tipping the balance to the MAS. End Note).

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Opposition Reaction to Plan B
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¶8. (C) The opposition would certainly cry foul about the MAS' maneuvering to push through its constitution. In addition to possible legal claims against the MAS, there would certainly be large-scale civil strikes in Santa Cruz and the rest of opposition-led lowland departments of Beni, Pando and Tarija. More radical elements would likely attempt to disrupt the economic linkages, between the lowland departments and the generally pro-MAS highland departments. Disruptions could include the shutting off of gas pipelines and withholding tax revenues. Cochabamba and Chuquisaca departments which are split between pro-MAS rural supporters and anti-MAS urban dwellers could become a battleground as well. Clashes between pro-MAS and anti-MAS groups could turn bloody throughout the country. In response Morales may feel compelled to call on the police and military to restore order.

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Military Reaction
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¶9. (C) Various current and former military contacts have told emboffs that military commanders would not carry out a government order to crack down on Santa Cruz. Two colonels

told an emboff that the government has asked the armed forces to draw up a "plan of attack" for Santa Cruz. Both colonels stated that the military is willing to write up plans, but it is not willing to execute them. The consensus amongst our contacts is that the armed forces would not be willing to use military force on a widespread basis to resolve a "political problem." We are mindful that our military contacts are friendly to us and therefore may not reflect the thinking of the entire military command structure. What is clear is that Morales cannot count on the entire military to support his plans. Without the military, the police would not have the resources to respond to the crisis.

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International Views on the Constituent Assembly
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¶10. (C) At a meeting with the Brazilian, Peruvian, Mexican, and German political counselors, all agreed that the Constituent Assembly would fail and that the MAS will try to ram through its constitution, or alternatively that Morales will opt to rule by decree to get his way. If Evo acts outside the existing democratic framework, the Brazilian did not anticipate a tough reaction from the hemisphere. Basically, if Morales is able to maintain a perception of legality and democracy despite some extra-constitutional actions, Latin American countries will likely not openly condemn Morales. The Peruvian and Mexican regrettably agreed.

¶11. (C) The German, on the other hand, was quite disturbed by this and blurted out that the Europeans certainly would condemn Morales if he violates Bolivia's constitution) although he was uncertain if it would lead to sanctions. The German expected consultations with the United States, Canada, and others to coordinate a response should the mano dura scenario play out. The Brazilian cynically commented that international condemnation "will last six months but then things will return to normal." He added that Brazil is still trying to have a constructive relationship with the Morales administration and told us that a visit by President Lula was in the works "within weeks" with the intent to "turn a new page" in the Bolivian-Brazilian relationship, leaving the early unpleasantries of Evo's rule behind. Interestingly, despite his government's ongoing efforts to mend relations with Evo, the Brazilian worried that under Plan B, the opposition will reject Morales' rule and that Evo may in turn ask for Venezuelan military intervention to reestablish control in the eastern departments. "And, what are we to do then?" he asked. While no one was ready to rule out Venezuelan intervention, no one had an answer as to what to do should it happen.

¶12. (C) Emboff spoke separately with the French DCM. He views the Constituent Assembly with concern and pessimism; but, his basic message is that France is in a wait and see mode. The DCM discussed various possibilities, but he stressed the scenario in which the MAS approves its constitution "in full" within the assembly with little to no negotiation with the opposition. He never discussed Plan B directly, but mentioned that Morales would likely encourage "his base" to push the MAS agenda and constitution via any means necessary. He stressed that Morales would likely avoid direct involvement with violent actors to maintain the appearance that his government still respects democracy. Short of crossing a clear democratic redline, he stated France (and probably other European nations) would have difficulty responding with more than a statement of concern.

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Comment
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¶13. (C) Plan B seems more likely than scenario I -- a negotiated agreement (ref a). Evo's potential "mano dura" approach is concerning and has policy implications. Under this scenario, the MAS will cross constitutional redlines, but the crossing will be blurred by a fog of legitimacy

likely resulting in a weak international response. There is a high probability for chaos and instability as President Morales will not be able to control the entire country. The military's response will be key. And, if the military refuses to take sides as many anticipate, Venezuela could become the X factor. End Comment.

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